

**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

WEYERHAEUSER COMPANY and
E.I. DUPONT DE NEMOURS AND
COMPANY,

Defendants.

NO.

CONSENT DECREE

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I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology), and Weyerhaeuser Company (Weyerhaeuser) and E.I. duPont de Nemours and Company (DuPont) (collectively, Defendants) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Defendants to undertake the remedial actions identified in Section VI of this Decree, and as more specifically described in Exhibit A, the Cleanup Action Plan.

Ecology has determined that these actions are necessary to protect public health and the environment.

B. The Complaint in this action is being filed simultaneously with this Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these matters without litigation is reasonable and in the public interest and that entry of this Decree is the most appropriate means of resolving these matters.

C. In signing this Decree, Defendants agree to its entry and agree to be bound by its terms.

D. By entering into this Decree, the Parties do not intend to discharge nonsettling parties from any liability they may have with respect to matters alleged in the Complaint. The Parties retain the right to seek reimbursement and/or recover costs, in whole or in part, from any liable persons for sums expended under this Decree.

E. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts; provided, however, that Defendants shall not challenge the jurisdiction of Ecology in any proceeding to enforce this Decree.

1 F. The Court is fully advised of the reasons for entry of this Decree, and good
2 cause having been shown:

3 Now, Therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as
4 follows:

5 **II. JURISDICTION**

6 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
7 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

8 B. Authority is conferred upon the Washington State Attorney General by
9 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after
10 public notice and hearing, Ecology finds the proposed settlement would lead to a more
11 expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a
12 settlement be entered as a consent decree issued by a court of competent jurisdiction.

13 C. Ecology has determined that a release or threatened release of hazardous
14 substances has occurred at the Site which is the subject of this Decree.

15 D. Ecology has given notice to Defendants, as set forth in RCW 70.105D.020(16),
16 of Ecology's determination that Defendants are potentially liable persons for the Site and that
17 there has been a release or threatened release of hazardous substances at the Site.

18 E. The actions to be taken pursuant to this Decree are necessary to protect public
19 health, welfare, and the environment.

20 F. Defendants have agreed to undertake the actions specified in this Decree and
21 consent to the entry of this Decree under MTCA.

22 **III. PARTIES BOUND**

23 This Decree shall apply to and be binding upon the signatories to this Decree (Parties),
24 their successors and assigns. The undersigned representative of each Party hereby certifies that
25 he or she is fully authorized to enter into this Decree and to execute and legally bind such Party
26 to comply with the Decree. Defendants agree to undertake all actions required by the terms

1 and conditions of this Decree and not to contest state jurisdiction regarding this Decree. No
2 change in ownership or corporate status shall alter the responsibility of Defendants under this
3 Decree. Defendants shall provide a copy of this Decree to all agents, contractors and
4 subcontractors retained to perform work required by this Decree and shall ensure that all work
5 undertaken by such contractors and subcontractors will be in compliance with this Decree.

6 **IV. DEFINITIONS**

7 Except for as specified herein, all definitions in WAC 173-340-200 apply to the terms
8 in this Decree.

9 A. Site: The Site, referred to as the Former DuPont Works Site, is located in
10 southwestern Pierce County, within the City of DuPont, Washington. The Site covers that
11 portion of the former DuPont Works production area located south of Sequimitchew Creek and
12 that portion of the former DuPont Works production area located north of Sequimitchew Creek
13 other than the property known as Parcel 2, which was separately addressed in 1997 and thereby
14 removed from the scope of this Consent Decree. The Site is more particularly described in the
15 detailed site diagram attached to this Decree as Exhibit B.

16 B. Parties: Refers to the Washington State Department of Ecology, Weyerhaeuser
17 Company, and E.I. duPont de Nemours and Company.

18 C. Defendants: Refers to both Weyerhaeuser Company, and E.I. duPont de
19 Nemours and Company.

20 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
21 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.
22 The terms "Consent Decree" or "Decree" shall include all exhibits to the Consent Decree.

23 E. CAP: Refers to the Cleanup Action Plan attached to this Consent Decree as
24 Exhibit A, together with its figures and schedule, all of which are incorporated in this Consent
25 Decree by this reference.
26

V. STATEMENT OF FACTS

Ecology makes the following findings of fact without any express or implied admissions by Defendants:

A. Property History: The Site is depicted in Figure 1-1 of the CAP. The property was originally used by Native Americans. In the 1830s, Europeans settled in the area and built Fort Nisqually, which was located in the northern portion of the Site. The Site is part of a larger tract of land, acquired by DuPont in 1906 for the construction of an explosives plant and the historical Village of DuPont as a company town for plant workers. DuPont continued to manufacture explosives at the Site until the mid 1970s, when it sold the property and adjacent areas to Weyerhaeuser. Weyerhaeuser still owns the Site. Activities at the Site during its operation and decommissioning resulted in the accumulation of hazardous substances in soils Site-wide and in groundwater.

B. Site Investigations: Actions taken at the Site subsequent to the manufacturing shutdown in 1976 include the following:

- In 1985, Weyerhaeuser initiated studies to determine whether hazardous substances were present.
- In 1986, a Phase I Site Survey and Review was conducted to identify areas on-Site that may be of environmental concern.
- In 1986, soil contamination was first documented and reported to Ecology.
- In 1987, a Phase II Site Characterization study was performed, which characterized the type, concentration, and distribution of constituents at 38 areas on the Site.
- In 1989, a Baseline Human Health Risk Assessment was performed using results of the Phase II survey.
- In 1991, Weyerhaeuser and DuPont signed a Consent Decree (No. 91 2 01703 1) with Ecology. This required the Companies to complete an Remedial Investigation (RI), Risk Assessment (RA), and Feasibility Study (FS) for the Site. The Site was

1 divided into two main areas: Parcel 1 (approximately 636 acres); and Parcel 2
2 (approximately 205 acres).

- 3 • In 1994 and 1995, Draft RI, RA, and FS reports were submitted to Ecology and
4 underwent public review.
- 5 • In 1996, based on the result of interim source removal actions, Ecology approved a
6 Cleanup Action Plan for Parcel 2 that provided for no further remediation activities
7 except for institutional controls to maintain the industrial use of Parcel 2.
- 8 • In 1997, Parcel 2 was deleted from the 1991 Consent Decree, and the deed
9 restriction requiring institutional controls to maintain the industrial use was
10 recorded in the Pierce County Auditor's Office.
- 11 • Between 1990 and 2001, while studies and negotiations were ongoing,
12 Weyerhaeuser and DuPont undertook interim source removal actions to clean up
13 soil and/or debris at the Site, in accordance with MTCA and the 1991 Consent
14 Decree.

15 C. Interim Remedial Actions: Interim source removals (ISR) have been conducted
16 at the Site between 1990 and 2001 to remove soil and/or debris from specific areas. These ISR
17 activities were undertaken in specific areas which were defined according to historical
18 manufacturing, production and disposal operations at the Site. Ecology-approved removal
19 activities were summarized in a series of ISR memoranda that have been submitted to Ecology.

20 D. Previous Reports: In 2002, Defendants submitted to Ecology revised drafts of
21 the RI, RA and FS reflecting the condition of the Site subsequent to the removal of
22 contaminated soil and debris in the interim source removal actions. These documents present
23 the basis for the decisions regarding remedial actions selected for the Site.

24 E. Site Conditions: Based on the studies performed, the following summarizes the
25 nature and extent of contamination for each of the media at the Site:
26

1 1. **Soil:** Site soil contamination consists mostly of lead and arsenic. Lead
2 contamination was detected site-wide. Arsenic contamination was generally detected
3 within 25 feet of the former narrow gauge railroad track beds but also occurs in other
4 discrete areas of the Site. The vertical extent of this contamination is generally
5 confined to a depth of less than one foot below ground surface in all areas except in
6 discrete areas where acid was discharged, drywell locations, some production-related
7 foundations, and disposal areas. The vertical extent is limited to a maximum depth of
8 24 feet below ground surface in these areas.

9 There are also isolated small occurrences (representing less than 1% of the total
10 volume of contaminated soils) of additional hazardous substances (including such
11 constituents as total petroleum hydrocarbons (TPH), mercury, di- and trinitrotoluenes
12 (DNT/TNT), and/or benzo(a)pyrene) in soils and debris. These occurrences are of
13 limited (less than 25 feet) lateral extent and are rarely more than 1 foot below ground
14 surface in all areas except where acid was discharged, drywell locations, some
15 production-related foundations, and disposal areas where they may be as deep as
16 15 feet.

17 2. **Groundwater:** DNT is the only chemical that is of potential concern in
18 groundwater. DNT concentrations are very low, often below drinking water standards.
19 All other chemicals are either below levels of concern, were not detected, or are below
20 background concentrations.

21 3. **Surface Water:** Two surface water bodies—Sequalitchew Creek and
22 Old Fort Lake—are within the Site boundary. Sequalitchew Creek is a perennial
23 stream that originates in Sequalitchew Lake east of the Site and discharges into Puget
24 Sound. Old Fort Lake is a small glacial kettle lake that has no inlet or outlet. The lake
25 is fed by groundwater from the water table aquifer, and the lake level is an expression
26 of the water table aquifer.

1 Of the wide range of chemical constituents sampled and analyzed within on-site
2 surface waters, only dissolved lead and dissolved copper were detected, but at
3 concentrations within the range of background.

4 4. **Sediments:** Of the wide range of chemicals for which freshwater
5 sediment samples were analyzed, no chemicals were detected at elevated
6 concentrations. Detected concentrations of metals were comparable to available
7 background sediment data for the Puget Sound region.

8 **VI. WORK TO BE PERFORMED**

9 This Decree contains a program designed to protect public health, welfare and the
10 environment from the known release, or threatened release, of hazardous substances at, on, or
11 from the Site. The requirements of such program are described generally in this section of the
12 Decree. The CAP, Exhibit A, describes the proposed remedial action in greater detail, and
13 includes a schedule for the work to be performed.

14 A Defendants, through their contractor(s) and subcontractor(s) as necessary, shall
15 perform the following remedial actions at the Site, as summarized below and as further
16 described in the CAP, Exhibit A:

17 1. Soil Excavation:

18 Most of the lead and arsenic contaminated soils at the site will be
19 excavated and then consolidated in placement areas. A golf course will be
20 constructed over an area that includes the placement areas and will serve as an
21 engineered cap on the placement areas. Soils with contaminant concentrations
22 higher than the level deemed acceptable for placement under the golf course
23 (the golf course remediation level), and soils contaminated with hazardous
24 substances other than lead and arsenic, will be excavated and disposed of at an
25 off-site hazardous waste landfill.
26

1 2. Cultural Resources:

2 All excavation work within three (3) feet of current ground surface will
3 be monitored by trained archeologists to determine if cultural or archeological
4 artifacts are present. If any artifacts are found they will be treated in the manner
5 described in the Cultural Resource Protection Plan that is part of the CAP.

6 3. Soil Capping:

7 Contaminated soil in the area of the former narrow guage railroad track
8 bed in Sequelitchew Creek Canyon will be capped in place with gravel and
9 asphalt.

10 4. Groundwater Monitoring:

11 Residual DNT concentrations in Site groundwater will be monitored
12 until such concentrations drop below drinking water standards for four
13 consecutive monitoring intervals.

14 5. Institutional Controls:

15 Both physical controls and legal and administrative mechanisms will be
16 used to ensure, to the degree possible, that current and future citizens and
17 wildlife do not come into contact with residual contamination, and that the
18 integrity of the cap/cover containment system is maintained. Institutional
19 controls will take the form of restrictive covenants placed with the deed. The
20 restrictive covenants will limit Site use with the purpose of minimizing
21 disturbance to the cap/cover system, and will prevent any unauthorized
22 excavation on the property.

23 A deed restriction will limit Site use to commercial, industrial and open
24 space uses. An additional deed restriction will be required for the property
25 inside the golf course footprint that limits this property to that sole use and
26 places restrictions on activities that could disturb the cap/cover.

1 A deed restriction shall also be placed upon the Site to restrict the use of
2 groundwater to non-potable uses only.

3 Defendants agree not to perform any remedial actions outside the scope
4 of this Decree unless the Parties agree to amend the CAP to cover these actions.
5 All work conducted under this Decree shall be done in accordance with WAC
6 173-340 unless otherwise provided herein.

7 VII. DESIGNATED PROJECT COORDINATORS

8 The project coordinator for Ecology is:

9 Mike L. Blum
10 Department of Ecology
11 Southwest Regional Office
12 PO Box 47775
13 Olympia, WA 98504-7775

14 The project coordinator for Weyerhaeuser is:

15 Robert N. Martin
16 Weyerhaeuser Company
17 Mail Stop EC3 3C8
18 P.O. Box 9777
19 Federal Way, WA 98063-9777

20 The project coordinator for DuPont is:

21 Ronald J. Buchanan
22 E.I. duPont de Nemours Company
23 Routes 141 & 48
24 Barley Mill Plaza, Building 27
25 Wilmington, DE 19805

26 Each project coordinator shall be responsible for overseeing the implementation of this
Decree. The Ecology project coordinator will be Ecology's designated representative at the
Site. To the maximum extent possible, communications between Ecology and Defendants and
all documents, including reports, approvals, and other correspondence concerning the activities
performed pursuant to the terms and conditions of this Decree, shall be directed through the
project coordinators. The project coordinators may designate, in writing, working level staff
contacts for all or portions of the implementation of the remedial work required by this Decree.

1 The project coordinators may agree to minor modifications to the work to be performed
2 without formal amendments to this Decree. Minor modifications will be documented in
3 writing by Ecology.

4 Any Party may change its respective project coordinator. Written notification shall be
5 given to the other Parties at least ten (10) calendar days prior to the change.

6 **VIII. PERFORMANCE**

7 All work performed pursuant to this Decree shall be under the direction and/or
8 supervision, as necessary, of a professional engineer or professional hydrogeologist, or
9 equivalent, with experience and expertise in hazardous waste site investigation and cleanup.
10 Any construction work must be under the direction of a professional engineer. Defendants
11 shall notify Ecology in writing as to the identity of such engineer(s) or hydrogeologist(s), or
12 others and of any contractors and subcontractors to be used in carrying out the terms of this
13 Decree, in advance of their involvement at the Site.

14 **IX. ACCESS**

15 Ecology or any Ecology-authorized representatives shall have the authority to enter and
16 freely move about all property at the Site for the purposes of, *inter alia*: inspecting records,
17 operation logs, and contracts related to the work being performed pursuant to this Decree;
18 reviewing Defendants' progress in carrying out the terms of this Decree; conducting such tests
19 or collecting such samples as Ecology may deem necessary; using a camera, sound recording,
20 or other documentary type equipment to record work done pursuant to this Decree; and
21 verifying the data submitted to Ecology by Defendants. While Ecology reserves its rights to
22 enter and inspect the Site, as set forth above, in the case of an emergency, in all other instances
23 Ecology will provide reasonable notice and, in most cases, will endeavor to provide 48-hour
24 advance notice of any Site inspection. All parties with access to the Site pursuant to this
25 section shall comply with approved health and safety plans as well as with any other site-
26 access operating procedures reasonably required by Defendants.

1 **X. SAMPLING, DATA REPORTING, AND AVAILABILITY**

2 With respect to work performed at the Site for the implementation of this Decree,
3 Defendants shall make the quality-assured results of all compliance sampling, laboratory
4 reports, and/or test results generated by them, or on their behalf, available to Ecology and shall
5 submit such results that are quality-assured in accordance with the standards outlined in either
6 the Management Plan for Remedial Investigation/Feasibility Study (Hart Crowser, 1992) or
7 subsequent agreements with Ecology, in accordance with Section XI of this Decree.

8 If requested by Ecology, Defendants shall allow split or duplicate samples to be taken
9 by Ecology and/or its authorized representatives of any samples collected by Defendants
10 pursuant to the implementation of this Decree. Defendants shall notify Ecology a minimum of
11 seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall,
12 upon request, allow split or duplicate samples to be taken by Defendants or their authorized
13 representatives of any samples collected by Ecology pursuant to the implementation of this
14 Decree provided it does not interfere with the Department's sampling. To the extent
15 practicable, and without limitation on Ecology's rights under Section IX, Ecology shall
16 endeavor to provide the same seven (7) day notice to Defendants prior to any sample collection
17 activity.

18 **XI. PROGRESS REPORTS**

19 Defendants shall submit to Ecology written quarterly progress reports which describe
20 the actions taken during the previous quarter to implement the requirements of this Decree.
21 The progress report shall include the following:

- 22 A. A list of on-site activities that have taken place during the quarter;
23 B. Detailed description of any material deviations from required tasks not
24 otherwise documented in project plans or amendment requests;
25 C. Description of all material deviations from the schedule during the current
26 quarter and any planned deviations in the upcoming quarter;

1 D. For any deviations in schedule, a plan for recovering lost time and maintaining
2 compliance with the schedule, if possible;

3 E. All quality-assured data received by Defendants during the past quarter and an
4 identification of the source of the sample;

5 F. A list of deliverables for the upcoming quarter if different from the schedule;
6 and

7 All progress reports shall be submitted by the tenth day of the first month of the quarter
8 in which they are due after the effective date of this Decree. Unless otherwise specified,
9 progress reports and any other documents submitted pursuant to this Decree shall be hand-
10 delivered, sent by certified mail (return receipt requested), or electronically submitted (receipt
11 confirmed) to Ecology's project coordinator.

12 XII. RETENTION OF RECORDS

13 Defendants shall preserve, during the pendency of this Decree and for ten (10) years
14 from the date this Decree is no longer in effect as provided in Section XXV, all records,
15 reports, documents, and underlying data in their possession relevant to the implementation of
16 this Decree, or in the alternative may furnish to Ecology copies of all such records, reports,
17 documents, and underlying data, and shall insert in contracts with project contractors a similar
18 record retention requirement. Upon request of Ecology, Defendants shall make all
19 non-privileged, non-archived records available to Ecology and allow access for review. All
20 non-privileged archived records shall be made available to Ecology within a reasonable period
21 of time. Ecology agrees, to the extent permitted by law, to maintain the confidentiality of any
22 proprietary information requested.

23 XIII. TRANSFER OF INTEREST IN PROPERTY

24 No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold,
25 or other interest in any portion of the Site shall be consummated without provision for ensuring
26 that the integrity of the cap/cover containment system is maintained, that Site use is limited for

1 the purpose of minimizing disturbance to the cap/cover containment system, that unauthorized
2 excavation will be prevented, and that use of groundwater is restricted to non-potable uses
3 only.

4 Prior to transfer of any legal or equitable interest in all or any portion of the property,
5 and for the duration of this Decree, Weyerhaeuser shall serve a copy of this Decree upon any
6 prospective purchaser, lessee, transferee, assignee, or other successor in interest of the
7 property; and, at least thirty (30) days prior to any transfer, Weyerhaeuser shall notify Ecology
8 of said contemplated transfer. Nothing in this Decree is intended to preclude transfer of any
9 legal or equitable interest in a portion of the property at which remedial actions have been
10 completed prior to completion of remedial actions for the entire Site.

11 **XIV. RESOLUTION OF DISPUTES**

12 A. In the event a dispute arises as to an approval, disapproval, proposed
13 modification or other decision or action by Ecology's project coordinator, the Parties shall
14 utilize the dispute resolution procedure set forth below.

15 1. Upon receipt of the Ecology project coordinator's decision, Defendants
16 have fourteen (14) days within which to notify Ecology's project coordinator of
17 their objection to the decision.

18 2. The Parties' project coordinators shall then confer in an effort to resolve
19 the dispute. If the project coordinators cannot resolve the dispute within
20 fourteen (14) days, Ecology's project coordinator shall issue a written decision.

21 3. Defendants may then request Ecology management review of the
22 decision. This request shall be submitted in writing to the Toxics Cleanup
23 Program Manager within seven (7) days of receipt of Ecology's project
24 coordinator's decision.

25 4. Ecology's Program Manager shall conduct a review of the dispute and
26 shall issue a written decision regarding the dispute within thirty (30) days of

1 Defendants' request for review. The Program Manager's decision shall be
2 Ecology's final decision on the disputed matter.

3 B. If Ecology's final written decision is unacceptable to Defendants, Defendants
4 have the right to submit the dispute to the Court for resolution. The Parties agree that one
5 judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute
6 arising under this Decree. In the event Defendants present an issue to the Court for review, the
7 Court shall review any investigative or remedial action or decision of Ecology made pursuant
8 to RCW 70.105D.030 and RCW 70.105D.050 under an arbitrary and capricious standard of
9 review.

10 C. The Parties agree to only utilize the dispute resolution process in good faith and
11 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
12 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,
13 the other Party may seek sanctions.

14 Implementation of these dispute resolution procedures shall not provide a basis for
15 delay of any activities required in this Decree other than activities which are the subject of
16 dispute, unless Ecology agrees in writing to a schedule extension or the Court so orders.

17 **XV. AMENDMENT OF CONSENT DECREE**

18 This Decree may only be amended by a written stipulation among the Parties to this
19 Decree that is entered by the Court or by order of the Court. Such amendment shall become
20 effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by
21 any Party to the Decree.

22 Defendants shall submit any request for an amendment to Ecology for approval.
23 Ecology shall indicate its approval or disapproval in a timely manner after the request for
24 amendment is received. If Ecology does not agree to any proposed amendment, reasons for the
25 disapproval shall be stated in writing, and the disagreement may be addressed through the
26 dispute resolution procedures described in Section XIV of this Decree. If Ecology and

1 Defendants agree to substantial changes, Ecology shall provide additional public notice and
2 opportunity to comment.

3 **XVI. EXTENSION OF SCHEDULE**

4 A. Defendants shall inform Ecology of material deviations from the schedule set
5 forth in Figure 6-5 of the CAP, Exhibit A, and shall obtain Ecology's approval for any
6 significant extensions thereto. An extension shall be granted only when a request for an
7 extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration
8 of the deadline for which the extension is requested, and good cause exists for granting the
9 extension. All extensions shall be requested in writing. The request shall specify the reason(s)
10 the extension is needed.

11 An extension shall only be granted for such period of time as Ecology determines is
12 reasonable under the circumstances. A requested extension shall not be effective until
13 approved by Ecology or the Court. Ecology shall act upon any written request for extension in
14 a timely fashion. It shall not be necessary to formally amend this Decree pursuant to Section
15 XV when a schedule extension is granted.

16 B. The burden shall be on the Defendants to demonstrate to Ecology that the
17 request for such extension has been submitted in a timely fashion and that good cause exists for
18 granting the extension. Good cause includes, but is not limited to, the following:

- 19 1. Circumstances beyond the reasonable control and despite the due
20 diligence of Defendants including delays caused by unrelated third parties or
21 Ecology, such as (but not limited to) delays by Ecology in reviewing,
22 approving, or modifying documents submitted by Defendants or in issuing final
23 approval for phases of remediation; provided, neither increased costs of
24 performance of the terms of the Decree nor changed economic circumstances
25 shall be considered circumstances beyond the reasonable control of Defendants;
26 or

2. “Force majeure” events such as acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; discovery at the Site of subsurface structures, materials or archaeological objects not known at the time of entering into this Consent Decree; or
3. Endangerment as described in Section XVII.

C. Ecology may extend the schedule for a period not to exceed ninety (90) days, except where an extension is needed as a result of:

1. Delays in the issuance of a necessary permit which was applied for in a timely manner, or compliance with permit conditions for which additional time is necessary; or
2. Administrative or judicial review of the issuance, nonissuance, or reissuance of a necessary permit; or
3. Other circumstances deemed exceptional or extraordinary by Ecology; or
4. Endangerment as described in Section XVII.

Ecology shall give Defendants written notification in a timely fashion of any extensions granted pursuant to this Decree.

XVII. ENDANGERMENT

In the event Ecology determines that activities implementing or in noncompliance with this Decree, or any other circumstances or activities, are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Defendants to stop further implementation of this Decree for such period of time as needed to abate the danger or may petition the Court for an order as appropriate. During any stoppage of work under this section, the obligations of Defendants with respect to the work under this Decree which is ordered to be stopped shall be suspended and the time periods for performance of that work, as well as the time period for any other

1 work dependent upon the work which is stopped, shall be extended, pursuant to Section XVI of
2 this Decree, for such period of time as Ecology determines is reasonable under the
3 circumstances.

4 In the event Defendants determine that activities undertaken in furtherance of this
5 Decree or any other circumstances or activities are creating an endangerment to the people on
6 the Site or in the surrounding area or to the environment, or to archaeological objects,
7 Defendants may stop implementation of this Decree for such period of time necessary for
8 Ecology to evaluate the situation and determine whether Defendants should proceed with
9 implementation of the Decree or whether the work stoppage should be continued until the
10 danger is abated. Defendants shall notify Ecology's project coordinator as soon as possible,
11 but no later than twenty-four (24) hours after such stoppage of work, and thereafter provide
12 Ecology with documentation of the basis for the work stoppage. If Ecology disagrees with
13 Defendants' determination, it may order Defendants to resume implementation of this Decree.
14 If Ecology concurs with the work stoppage, Defendants' obligations shall be suspended and the
15 time period for performance of that work, as well as the time period for any other work
16 dependent upon the work which was stopped, shall be extended, pursuant to Section XVI of
17 this Decree, for such period of time as Ecology determines is reasonable under the
18 circumstances. Any disagreements pursuant to the clause shall be resolved through the dispute
19 resolution procedures in Section XIV.

20 **XVIII. COVENANT NOT TO SUE; OTHER ACTIONS**

21 In consideration of compliance by Defendants (including any successors in interest as
22 determined by RCW 70.105D.040(4)(e) and (f) or successor provisions) with the terms and
23 conditions of this Decree, Ecology agrees that compliance with this Decree shall stand in lieu
24 of any and all administrative, legal, and equitable remedies and enforcement actions available
25 to Ecology against Defendants for the release or threatened release of known or suspected
26 hazardous substances at the Site covered by the terms of this Decree.

1 Ecology reserves its rights to institute remedial action(s) at the Site and subsequently
2 pursue cost recovery, and Ecology reserves its rights to issue orders and/or penalties or take
3 any other enforcement action pursuant to available statutory authority under the following
4 circumstances:

5 A. Where Defendants fail, after notice and opportunity to cure, to comply with any
6 requirement of this Decree;

7 B. In the event or upon the discovery of a release or threatened release not
8 addressed by this Decree which Ecology determines to present a previously unknown threat to
9 human health and the environment, and to which Defendants, after notice, fail to address, so
10 long as the release or threatened release is of hazardous substances not known by Ecology to
11 be present at the Site at the time this Decree is entered;

12 C. Upon Ecology's determination that action beyond the terms of this Decree is
13 necessary to abate an emergency situation which threatens public health or welfare or the
14 environment; provided, however, that Ecology shall first give Defendants notice and
15 opportunity to perform such abatement unless the threat is so immediate as to preclude notice;
16 or

17 Upon the occurrence or discovery of a situation beyond the scope of this Decree as to
18 which Ecology would be empowered to perform any remedial action or to issue an order
19 and/or penalty, or to take any other enforcement action. This Decree is limited in scope to the
20 geographic Site described in Exhibit B and to those hazardous substances which Ecology
21 knows to be at the Site when this Decree is entered.

22 Ecology reserves the right to take any enforcement action whatsoever, including a cost
23 recovery action, against potentially liable persons not party to this Decree.

24 **XIX. INDEMNIFICATION**

25 Defendants agree to indemnify and save and hold the State of Washington, its
26 employees, and agents harmless from any and all claims or causes of action for death or

1 injuries to persons or for loss or damage to property arising from or on account of acts or
2 omissions of each Defendant, its officers, employees, agents, or contractors in entering into
3 and implementing this Decree. However, Defendants shall not indemnify the State of
4 Washington nor save nor hold its employees and agents harmless from any claims or causes of
5 action arising out of the negligent acts or omissions of the State of Washington, or the
6 employees or agents of the state, in implementing the activities pursuant to this Decree.
7 Failure to comply with provisions of the Site Health and Safety Plan shall be deemed
8 negligence.

9 **XX. COMPLIANCE WITH APPLICABLE LAWS**

10 A. All actions carried out by Defendants pursuant to this Decree shall be done in
11 accordance with all applicable federal, state, and local requirements, including requirements to
12 obtain necessary permits, except as provided in paragraph B of this section.

13 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of RCW
14 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 and of any laws requiring or authorizing local
15 government permits or approvals for the remedial action under this Decree that are known to
16 be applicable at the time of entry of the Decree have been included in the CAP, Exhibit A, and
17 are binding and enforceable requirements of the Decree.

18 Defendants have a continuing obligation to determine whether additional permits or
19 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
20 action under this Decree. In the event either of the Defendants or Ecology determines that
21 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be
22 required for the remedial action under this Decree, it shall promptly notify the other Party of
23 this determination. Ecology shall determine whether Ecology or Defendants shall be
24 responsible to contact the appropriate state and/or local agencies. If Ecology so requires,
25 Defendants shall promptly consult with the appropriate state and/or local agencies and provide
26 Ecology with written documentation from those agencies of the substantive requirements those

1 agencies believe are applicable to the remedial action. Ecology shall make the final
2 determination on the additional substantive requirements that must be met by Defendants and
3 on how Defendants must meet those requirements. Ecology shall inform Defendants in writing
4 of these requirements. Once established by Ecology, the additional requirements shall be
5 enforceable requirements of this Decree. Defendants shall not begin or continue the remedial
6 action potentially subject to the additional requirements until Ecology makes its final
7 determination.

8 Ecology shall ensure that notice and opportunity for comment is provided to the public
9 and appropriate agencies prior to establishing the substantive requirements under this section.

10 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
11 exemption from complying with the procedural requirements of the laws referenced in RCW
12 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary
13 for the state to administer any federal law, the exemption shall not apply and Defendants shall
14 comply with both the procedural and substantive requirements of the laws referenced in RCW
15 70.105D.090(1), including any requirements to obtain permits.

16 **XXI. REMEDIAL ACTION COSTS**

17 The Defendants agree to pay remedial action costs incurred by Ecology pursuant to this
18 Decree as permitted by RCW 70.105D and WAC 173-340-550. These costs shall include work
19 performed by Ecology or its contractors for, or on, the Site under RCW 70.105D both prior to
20 and subsequent to the issuance of this Decree for investigations, remedial actions, and Decree
21 preparation, negotiations, oversight and administration. Ecology costs shall include costs of
22 direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The
23 Defendants agree to pay the required amount within ninety (90) days of receiving from
24 Ecology an itemized statement of costs that includes a summary of costs incurred, an
25 identification of involved staff, and the amount of time spent by involved staff members on the
26 project. A general statement of work performed will be provided upon request. At the request

1 of Defendants, Defendants and Ecology will consult on a quarterly basis with respect to
2 remedial action costs incurred by Ecology in the prior quarter and the costs Ecology anticipates
3 it will incur in the following quarter; provided, however, that nothing herein shall be deemed to
4 limit Ecology's discretion regarding appropriate remedial action costs. Itemized statements
5 shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of
6 the itemized statement will result in interest charges. Any disputes regarding remedial action
7 costs shall be subject to dispute resolution pursuant to Section XIV.

8 **XXII. IMPLEMENTATION OF REMEDIAL ACTION**

9 If Ecology determines that Defendants have failed without good cause to implement the
10 remedial action, Ecology may, after notice to Defendants, perform any or all portions of the
11 remedial action that remain incomplete. If Ecology performs all or portions of the remedial
12 action because of Defendants' failure to comply with its obligations under this Decree,
13 Defendants shall reimburse Ecology for the costs of doing such work in accordance with
14 Section XXI, provided that Defendants are not obligated under this section to reimburse
15 Ecology for costs incurred for work inconsistent with or beyond the scope of this Decree.

16 **XXIII. FIVE YEAR REVIEW**

17 As remedial action, including ground water monitoring, continues at the Site, the
18 parties agree to review the progress of remedial action at the Site, and to review the data
19 accumulated as a result of Site monitoring as often as is necessary and appropriate under the
20 circumstances. At least every five (5) years the parties shall meet to discuss the status of the
21 Site and the need, if any, of further remedial action at the Site. Ecology reserves the right to
22 require further remedial action at the Site under appropriate circumstances. This provision
23 shall remain in effect for the duration of the Decree.

24 **XXIV. PUBLIC PARTICIPATION**

25 Ecology shall maintain the responsibility for public participation at the Site. However,
26 Defendants shall cooperate with Ecology and, if agreed to by Ecology, shall:

1 A. Prepare drafts of public notices and fact sheets at important stages of the
2 remedial action. Ecology will finalize (including editing if necessary) and distribute such fact
3 sheets and prepare and distribute public notices of Ecology's presentations and meetings.
4 Ecology will provide Defendants with an opportunity to review and approve any drafts or edits
5 prepared by it prior to distribution;

6 B. Notify Ecology's project coordinator prior to the issuance of all press releases
7 and fact sheets, and before major meetings with the interested public and local governments.
8 Likewise, Ecology shall notify Defendants prior to the issuance of all press releases and fact
9 sheets, and before major meetings with the interested public and local governments;

10 C. Participate in public presentations on the progress of the remedial action at the
11 Site. Participation may be through attendance at public meetings to assist in answering
12 questions, or as a presenter;

13 D. In cooperation with Ecology, arrange and/or continue information repositories
14 to be located at Lakewood Public Library and Ecology's Southwest Regional Office at 300
15 Desmond Drive, Lacey, Washington 98504-7775. At a minimum, copies of all public notices,
16 fact sheets, and press releases; all quality-assured groundwater, surface water, soil, and air
17 monitoring data; remedial actions plans, supplemental remedial planning documents, and all
18 other similar documents relating to performance of the remedial action required by this Decree
19 shall be promptly placed in these repositories.

20 **XXV. DURATION OF DECREE**

21 This Decree shall remain in effect and the remedial program described in the Decree
22 shall be maintained and continued until Defendants have received written notification from
23 Ecology that the requirements of this Decree have been satisfactorily completed, or until the
24 Court determines that the requirements of the Decree have been satisfied.

1 **XXVI. CLAIMS AGAINST THE STATE**

2 Defendants hereby agree that they will not seek to recover any costs accrued in
3 implementing the remedial action required by this Decree from the State of Washington or any
4 of its agencies; and further, that Defendants will make no claim against the State Toxics
5 Control Account or any Local Toxics Control Account for any costs incurred in implementing
6 this Decree. Except as provided above, however, Defendants expressly reserve their right to
7 seek to recover any costs incurred in implementing this Decree from any other potentially
8 liable person.

9 **XXVII. CONTRIBUTION PROTECTION**

10 With regard to claims for contribution against Defendants for matters addressed in this
11 Decree, Ecology agrees that Defendants (including any successors in interest as determined by
12 RCW 70.105D.040(4)(e) and (f) or successor provisions) are entitled to protection from
13 contribution actions or claims as provided by RCW 70.105D.040, or as otherwise provided by
14 law.

15 **XXVIII. DEFENDANTS' RESERVATION OF RIGHTS**

16 Defendants reserve all rights and defenses which they may have and which are not
17 otherwise addressed in this Decree.

18 **XXIX. EFFECTIVE DATE**

19 This Decree is effective upon the date it is entered by the Court.

20 **XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

21 This Decree has been the subject of public notice and comment under
22 RCW 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will
23 lead to a more expeditious cleanup of hazardous substances at the Site.

24 If the Court withholds or withdraws its consent to this Decree, it shall be null and void
25 at the option of any party and the accompanying Complaint shall be dismissed without costs
26

1 and without prejudice. In such an event, no party shall be bound by the requirements of this
2 Decree.

3 CHRISTINE O. GREGOIRE
4 Attorney General

DEPARTMENT OF ECOLOGY

5
6 STEVEN J. THIELE, WSBA #20275
7 Assistant Attorney General
8 Attorneys for Plaintiff
9 State of Washington,
10 Department of Ecology

JAMES J. PENDOWSKI
Program Manager
Toxics Cleanup Program

11 SUMMIT LAW GROUP PLLC

12 POLLY L. McNEILL, WSBA#17437
13 Attorneys for Defendants
14 Weyerhaeuser Company
15 E.I. Dupont De Nemours and Company

16 DATED this ____ day of _____, 2003.

17
18 JUDGE
19 Pierce County Superior Court

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21
22
23
24 F:\cases\Thiele\Dupont\CD Final Clean.doc
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